

No. 9757-3Lab-68/26433.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Haryana, Chandigarh, in respect of the dispute between the workmen and management of M/s Ego Metal Works Private Ltd., Gurgaon :

BEFORE SHRI K. L. GOSAIN, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA, CHANDIGARH

REFERENCE NOS. 3 OF 1968 AND 19 OF 1968

between

The Workmen and the Management of M/s Ego Metal Works Private Ltd., Gurgaon

Present.—Shri S.L. Gupta, for the management

Shri C.B. Kaushik, for the workmen.

AWARD

An industrial dispute having come into existence between the workmen and the management of M/s Ego Metal Works Private Ltd., Gurgaon, over the following four items, the same was referred for adjudication to this Tribunal under clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 by two separate notifications of the Haryana Government:-

- (1) Whether the workers are entitled to the payment of bonus for the year 1966 ? if so, with what details ?
- (2) Whether the grades and scales of pay of the workers should be fixed ? If so, with what details and from which date ?
- (3) Whether the workers are entitled to efficiency allowance at 15 per cent of the wages as admissible to the workers in the Grinding and polishing departments ? if so, with what details and from which date ?
- (4) Whether the gratuity scheme should be introduced in the factory? if so, with what details and from which date ?

Item Nos. 1 and 2 were referred by means of notification No. ID/GG/22A-67/310, dated 4th January, 1968 and item Nos. 3 and 4 were referred by notification No. ID/GG/22A-67/3887, dated 14th February, 1968. This award will dispose off both the aforesaid references.

Usual notices were issued to the parties in both the aforesaid references and in response to the same the workmen filed their statements of claims and the management filed their written statements in both of them. At the stage of evidence the representatives of the parties stated that most of the evidence would be common in both the cases and that the references may be consolidated in order to save time and expense. Orders were then passed for consolidation of both the references and parties were directed to lead their evidence. After some of the evidence had been recorded and before its conclusion, the parties mutually settled the dispute and reduced the said settlement to writing. Two separate settlement deeds were executed, one between the management of the concern and the workmen as represented by the Engineering Mazdoor Union and the other between the management of the concern and the workmen as represented by the other trade union, namely, Engineering Workers' Union, Gurgaon. Each of these documents had two annexures with it. The parties produced the said documents and annexures before me and I recorded the statements of their representatives with regard to the same. The main two documents were marked as Ex-A and B by me. Annexures to Ex-A have been marked as Ex-C and Ex-D and those to Ex-B have been marked as Ex-E and Ex-F. As desired by the parties I make my award in terms of Ex-A and B read with annexures C, D, E and F. All the aforesaid six exhibits, namely Exhibits A to F shall be published along with this award and shall be deemed to be annexures to the same and shall form a part and parcel of it.

No order as to costs.

Dated : 16th October, 1968.

K.L. GOSAIN,
Presiding Officer,
Industrial Tribunal, Haryana,
Chandigarh.

No. 1145, dated Chandigarh, the 16th of October, 1968.

The award be submitted to the Secretary to Government, Haryana, Labour and Employment Department, Chandigarh, as required by section 15 of the Industrial Disputes Act, 1947.

K.L. GOSAIN,
Presiding Officer,
Industrial Tribunal, Haryana,
Chandigarh.

EXHIBIT 'A'

AFFIDAVIT

The 23rd September, 1968

We, Raminder Singh Chawla, Administration Manager on behalf of the Management of M/s EGO Metal Works Private Ltd., Manesar Road, Gurgaon and Shri C.B. Kaushik, General Secretary of Engineering Mazdoor Union, Gurgaon do solemnly declare that the parties have entered into the settlement under the terms and conditions herein below noted.

MEMORANDUM OF SETTLEMENT

Whereas an Industrial Dispute is pending before the Hon'ble Presiding Officer, Industrial Tribunal, Haryana, Chandigarh under reference No. 3 and 19 of 1968. The parties, hereby settle the dispute under the terms herein below stated.

TERMS OF SETTLEMENT REGARDING BONUS FOR THE YEAR, 1966

1. That the Company has already paid Bonus at 4 per cent of the total wages of 1966 at prorata basis. That it is realised that within the profits made in the year, 1966 by the Company even Bonus at 4 per cent is not due. But the management has agreed to pay additional Bonus at 1 per cent of the total wages for 1966 at pro rata basis. This will be in addition to the Bonus already paid. The representative of the workers, however, agree

that on completion of the audited balance sheet if the additional 1 per cent is not due out of the audited balance sheet in accordance within the payment of the Bonus Act, 1965 the disbursement of 1 per cent Bonus now agreed upon,—vide this settlement is liable to be adjusted towards the Bonus due for the year, 1967.

That this additional Bonus of 1 per cent is to be paid within 30 days from the date of publication of award of the Industrial Tribunal by the Government of Haryana.

2. That the Balance Sheet for the year, 1967 is not ready. But the management has agreed to pay Bonus at 4 per cent of the total wages for the year, 1967 at pro-rata basis (being the minimum under payment of Bonus Act, 1965). The Bonus of 1967 will be paid in accordance with the scheme detailed below :

- (a) Workers drawing up to Rs 100 to be paid by the end of November, 1968.
- (b) Workers drawing up to Rs 150 to be paid by the end of December, 1968.
- (c) Workers drawing up to Rs 250 to be paid by the end of January, 1969.
- (d) Workers drawing above Rs 250 to be paid within the month of March, 1969.

REGARDING GRADES AND SCALES

The parties have agreed to introduce grades and scales of pay and hereby enclose a schedule signed by all the parties as Annexure "A" to this affidavit.

REGARDING EFFICIENCY ALLOWANCE

4. The workers withdraw this demand and do not press for the same. But the parties would negotiate to introduce some scheme of this type for the benefit of the workmen such as incentive scheme etc.

5. That the parties have agreed about the gratuity scheme with details as schedule signed by all the parties as Annexure "B" to this affidavit.

VERIFICATION

We, S. Raminder Singh Chawla on behalf of the Management and Shri C.B. Kaushik, General Secretary, Engineering Mazdoor Union, Gurgaon do state on solemn affirmation that the contents of the above settlement are correct and nothing has been concealed from this Hon. Tribunal and pray that the same may kindly be approved and an award be given accordingly.

S. RAMINDER SINGH CHAWLA,
Administration Manager,
from the Management Side.

C.B. KAUSHIK,
General Secretary,
Representative of the Workmen.

ATTESTED :

K.L. GOSAIN,
Presiding Officer,
Industrial Tribunal, Haryana,
Chandigarh

MOOL CHAND AGGARWAL,
Commissioner for Administering,
Oath and Attesting Affidavits,
Gurgaon.
(24-9-68).

EXHIBIT "B"

AFFIDAVIT

The 23rd September, 1968.

We, Raminder Singh Chawla, Administration Manager on behalf of the Management of M/s EGO Metal Works Pvt. Ltd., Manesar Road, Gurgaon and Shri Sardha Nand, General Secretary of Engineering Workers Union, Gurgaon do solemnly declare that the parties have entered into the settlement under the terms and conditions herein below noted.

MEMORANDUM OF SETTLEMENT

Whereas an Industrial Dispute is pending before the Hon'ble Presiding Officer, Industrial Tribunal, Haryana, Chandigarh under reference Nos. 3 and 19 of 1968. The Parties, hereby settle the dispute under the terms herein below stated.

TERMS OF SETTLEMENT

REGARDING BONUS FOR THE YEAR, 1966

1. That the Company has already paid Bonus at 4 per cent of the total wages of 1966 at pro-rata basis. That it is realised that within the profits made in the year, 1966 by the Company even Bonus at 4 per cent is not due. But the management has agreed to pay additional Bonus at 1 per cent of the total wages for 1966 at pro-rata basis. This will be in addition to the Bonus already paid. The representative of the workers however agree that on completion of the audited balance sheet if the additional 1 per cent is not due out of the audited balance sheet in accordance within the payment of Bonus Act, 1965 the disbursement of 1 per cent Bonus now agreed upon,—vide this settlement is liable to be adjusted towards the Bonus due for the year, 1967.

That this additional Bonus of 1 per cent is to be paid within 30 days from the date of publication of award of the Industrial Tribunal by the Government of Haryana.

2. That the Balance Sheet for the year, 1967 is not ready. But the management has agreed to pay Bonus at 4 per cent of the total wages for the year, 1967 at pro-rata basis (being the minimum under payment of Bonus Act, 1965). The Bonus of 1967 will be paid in accordance with the scheme detailed below :

- (a) Workers drawing up to Rs 100 to be paid by the end of November 1968.
- (b) Workers drawing up to Rs 150 to be paid by the end of December, 1968.
- (c) Workers drawing up to Rs 240 to be paid by the end of January, 1969.
- (d) Workers drawing above Rs. 250 to be paid within the month of March, 1969.

REGARDING GRADES AND SCALES

The parties have agreed to introduce grades and scales of pay and hereby enclose a schedule signed by all the parties as Annexure "A" to this affidavit.

REGARDING EFFICIENCY ALLOWANCE

4. The workers withdraw this demand and do not press for the same. But the parties would negotiate to introduce some scheme of this type for the benefit of the workmen such as incentive scheme etc.

5. That the parties have agreed about the gratuity scheme with details as schedule signed by all the parties as Annexure "B" to this affidavit.

VERIFICATION

We, S. Raminder Singh Chawla on behalf of the Management and Shri Sardha Nand, General Secretary, Engineering Workers Union, Gurgaon do state on solemn affirmation that the contents of the above settlement are correct and nothing has been concealed from this Hon. Tribunal and pray that the same may kindly be approved and an award be given accordingly.

S. RAMINDER SINGH CHAWLA
(Adm. Manager),
from the Management side.

SHRI SARDHA NAND
(General Secretary),
Representative of the Workmen.

ATTESTED :

K. L. GOSAIN,
Presiding Officer,
Industrial Tribunal, Haryana,
Chandigarh.

MOOL CHAND AGGARWAL,
Commissioner for Administering
Oath and Attesting Affidavits,
Gurgaon.
24-9-68.

ANNEXURE "A" TO AFFIDAVIT, DATED 23RD SEPTEMBER, 1968

Re : GRADES AND SCALES

<i>Categories</i>	<i>Grades and Scales on Basic Pay</i>
Un-skilled	.. Rs 72—4—92—EB—6—134.
Semi-skilled "A"	.. Rs 85—5—110—EB—7—159.
Semi-skilled "B"	.. Rs 95—6—125—EB—9—188.
Skilled "A"	.. Rs 125—9—170—EB—12—254.
Skilled "B"	.. Rs 160—11—215—EB—19—348.

S. RAMINDER SINGH CHAWLA,
(Admn. Manager),
from the Management side.
23-9-68

SHRI C. B. KAUSHIK,
General Secretary,
Representative of the Workmen.
23-9-68

K.L. GOSAIN,
Presiding Officer,
Industrial Tribunal, Haryana,
Chandigarh.

L.T.I. of AMAR NATH,
President.

ANNEXURE "B" TO AFFIDAVIT, DATED 23RD SEPTEMBER, 1968

Re : GRATUITY SCHEME

All the employees (including members of the staff) drawing salary upto Rs 400 per month (Four hundred only) would be paid 15 (fifteen) days salary for each completed year of service on the following conditions :—

- (1) No gratuity would be paid to the employees having less than 6 (six) years continuous service.
- (2) For the incomplete year the gratuity would be paid proportionately.
- (3) No gratuity would be paid to the employees dismissed on the ground of misconduct.

S. RAMINDER SINGH CHAWLA
(Admn. Manager),
from the Management side.
23-9-68

SHRI C.B. KAUSHIK,
General Secretary,
Representative of the workmen.
23-9-68

K.L. GOSAIN,
Presiding Officer,
Industrial Tribunal, Haryana,
Chandigarh.

L.T.I. of AMAR NATH,
President.

ANNEXURE "A" TO AFFIDAVIT, DATED 23RD SEPTEMBER, 1968

Re : GRADES AND SCALES

<i>Categories</i>	<i>Grade and Scales on Basic Pay</i>
Un-skilled	.. Rs 72—4—92—EB—6—134.
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Semi-skilled "B"	.. Rs 95—6—125—EB—9—188.
Skilled "A"	.. Rs 125—9—170—EB—12—254.
Skilled "B"	.. Rs 160—11—215—EB—19—348.

S. RAMINDER SINGH CHAWLA
(Admn. Manager)
from the Management side.

SHRI SARDHA NAND,
General Secretary,
Representative of the workmen.

K.L. GOSAIN,
Presiding Officer,
Industrial Tribunal, Haryana,
Chandigarh.

ANNEXURE "B" TO AFFIDAVIT, DATED 23RD SEPTEMBER, 1968

Re : GRATUITY SCHEME

All the employees (including members of the staff) drawing salary upto Rs 400 per month (Four hundred only) would be paid 15 (fifteen) days salary for each completed year of service on the following conditions :—

- (1) No gratuity would be paid to the employees having less than 6 (six) years continuous service.
- (2) For the incomplete year the gratuity would be paid proportionately.
- (3) No gratuity would be paid to the employees dismissed on the ground of misconduct.

S. RAMINDER SINGH CHAWLA,
(Admn. Manager),
from the Management side.

SHRI SARDHA NAND,
General Secretary,
Representative of the workmen.

K.L. GOSAIN,
Presiding Officer,
Industrial Tribunal, Haryana,
Chandigarh.

Dated 22nd October, 1968

No. 9748-3Lab-68/26435.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad, in respect of the dispute between the workmen and management of M/s Motoren Industries, Industrial Area, Faridabad.

BEFORE SHRI P. N. THUKRAL, PRESIDING OFFICER, LABOUR COURT, FARIDABAD
Reference No. 53 of 1967

between

Shri Jai Nand Singh, workman and the management of M/s Motoren Industries, Industrial Area, Faridabad.

Present :

Shri Sagar Ram Gupta, for the workman.
Shri R.C. Sharma, for the management.

AWARD

Shri Jai Nand Singh was employed as a Supervisor with M/s Motoren Industries, Industrial Area, N.I.T., Faridabad. He was charged with negligence in the performance of his duties and for insubordination. He was charge-sheeted and found guilty of the charges framed against him and was dismissed from service. He is aggrieved by reason of his dismissal and this gave rise to an Industrial Dispute. The Governor of Haryana in exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, referred the following dispute to this Court for adjudication *vide* Government Gazette Notification No. 237-SFIII-Lab-67/21033, dated 14th July, 1967 :—

Whether the termination of services of Shri Jai Nand Singh was justified and in order ? If not, to what relief is he entitled ?

On receipt of the reference usual notices were issued to the parties in response to which the workman filed his statement of claim and the management filed their written statement. On behalf of the management a number of preliminary objections were raised in the written statement as originally filed. It was pleaded that the Government had failed to express their opinion as to how and in what manner and on what basis the opinion was formed that an industrial dispute exists between the workman and the management. It was also pleaded that in the order of reference the expression "termination" has been used which is a very vague term. In the opinion of the management the expression termination simpliciter would mean retrenchment which is a matter which falls within the jurisdiction of the Industrial Tribunal as provided in the third schedule of the Industrial Disputes Act. It was also pleaded that the Government had failed to display in their order that less than 100 workmen were involved in this dispute.

On merits it was pleaded that the claimant was charged with negligence in the performance of his duties and insubordination as detailed in clause A and B of para I of the written statement on merits and that Shri E.F. Daniels, Secretary, of the respondent Company held a regular domestic enquiry and found that it was proved by the evidence before him that the claimant was guilty of the charges framed against him and so he was rightly dismissed by the management.

The pleadings of the parties gave rise to the following issues :—

- (1) Whether the reference is vague and invalid and this Court has no jurisdiction for the reasons given in the preliminary objection ?
- (2) Whether the domestic enquiry has not been properly conducted and is vitiated ?
- (3) Whether the claimant was guilty of negligence and misbehaved with the Works Manager and the termination of his services is justified and in order ?

At the request of the management issue No. 1 was tried as a preliminary issue and after hearing the learned representative of the parties this issue was found in favour the workman *vide* the order of this Court dated 3rd October, 1967 which is annexure A of this Award and the parties were directed to produce their evidence on merits.

On the date fixed for evidence the learned representative of the management submitted that the onus of issue No. 2 as framed was upon the workman and it was for him to begin his evidence. This request though technically correct was not considered feasible because the record of the domestic enquiry held by the management was with them and the services of the workman had been terminated as a result of the report of the Enquiry Officer. The question referred for adjudication to this Court is —

Whether the termination of services of Shri Jai Nand Singh was justified and in order ? If not, to what relief is he entitled ?

Accordingly, *vide* the orders of this Court dated 26th October, 1967 it was held that properly speaking it was for the management in the first instance to produce the record and prove that a proper and fair domestic

enquiry had been held in which the guilt of the workman was established and for this reason his dismissal was justified. In the interest of justice therefore the issue was recast as under :—

Whether the domestic enquiry held by the management was proper and fair and the termination of the services of the workman is justified ?

The management have produced the Enquiry Officer. After his evidence was over an application was given that issue No. 2 should be tried as a preliminary issue and evidence on issue No. 3 should be recorded only if the domestic enquiry held against the workman is found to be unfair or vitiated. It was urged that the Court had no jurisdiction to go into the merits of the alleged misconduct unless the domestic enquiry was first held to be not proper. I heard the learned representative of the parties and, *vide* the orders of this Court dated 30th January, 1968 it was held that issue No. 1 had already been tried and decided as a preliminary issue and it was not reasonable for the management to suggest that each and every issue should be decided separately and the decision on that issue announced before proceeding with the trial of the next issue. The management was therefore directed to produce all the evidence which they desired in support of their case. Thereafter the management produced their bill clerk in order to prove the loss said to have been caused by reason of the negligence of the claimant in the discharge of his duties and then closed their case. The workmen closed his evidence on 5th March, 1968 and the case was fixed for argument which could not be heard on the date fixed because the representative of the workman Shri Sagar Ram Gupta was busy elsewhere. The case was therefore fixed for 22nd April, 1968 but in the mean time the management gave another application dated 12th April, 1968 in which it was pleaded that the present Presiding Officer of this Court was acting without jurisdiction as his appointment had been made against a vacancy under Section 8 of the Industrial Disputes Act and it was illegal null and void because in the opinion of the management this Court had been constituted by the Punjab Government sometime in the year 1958 and after the formation of the State of Haryana no fresh notification for the constitution of this Court was issued. The question as to whether the objections regarding the validity of the constitution of the Court could be raised before that very Court also required decision and so instead of hearing arguments on 22nd April, 1968 as had already been ordered, the following additional issue was framed:—

Whether the objection regarding the validity of the constitution of the Court can be raised before the Court concerned ?

The case was adjourned for arguments but in the mean time the management again gave another application for permission to amend the written statement and take some more additional pleas. The additional pleas which the management wanted to take were that there was only an individual dispute between the claimant Shri Jai Nand Singh and it has been considered to be an industrial dispute by virtue of section 2A of the Industrial Dispute Act which according to the management has been held to be unconstitutional by the Punjab and Haryana High Court. An objection was also raised that the appointment of the present Presiding Officer had not been notified in the official Gazette as required by the rules framed under the Industrial Disputes Act. Naturally the representative of the workman wanted time to file a reply to this application and the case was therefore adjourned to 20th July, 1968 to enable the workman to file his reply and the case was fixed for 2nd August, 1968 for argument. Before the dates fixed the management filed still another application dated 4th July, 1968 in which they again asked for permission to amend the written statement and this time the objection which the management wanted to take was that by shifting the Headquarters of this Court from Rohtak to Faridabad, the Court to which the reference had originally been made had ceased to exist and a new Court had been constituted and therefore the reference made to the Court at Rohtak had lapsed and the dispute between the parties could not be adjudicated upon until and unless fresh reference was made by the Government of Haryana. It was also pleaded that the present Presiding Officer was originally appointed as Presiding Officer of the Labour Court, Rohtak, but this appointment was never notified. The plea of the management is that under the provisions of section 7 of the Industrial Disputes Act the Government has to take two steps namely to constitute the Labour Court and then to appoint its Presiding Officer and this may be done simultaneously either by separate notification or by one and the same notification, but in the absence of any notification that the Presiding Officer of the Labour Court, Rohtak, is either transferred to preside over the Labour Court at Faridabad or reappointed to act as Presiding Officer of the Labour Court, Faridabad, he has no jurisdiction to act as such. The representative of the workmen filed one consolidated reply to all these applications and the arguments of the learned representative of the parties on the merits of the case as well on this applications were ultimately heard on 2nd August, 1968.

Before I deal with the case on merits or express my opinion on the various technical objections raised on behalf of the management, I must say that the management have exhibited utter lack of responsibility in the conduct of the case. No responsible person would raise objections in the manner in which it has been done in this case. Issues were framed on 4th September, 1967 and the case was fixed for evidence of the parties and for arguments for 27th September, 1967. No request was made on the date on which issues were framed that arguments be first heard on the preliminary objections questioning the validity of the reference and the jurisdiction of this Court to adjudicate upon the reference and the case was fixed for evidence on all the issues without any objection by any party. On the date fixed for evidence the learned representative of the management requested that instead of recording evidence arguments may first be heard on the preliminary objections. This request was accepted and arguments were heard and the orders were announced on 3rd October, 1967 and the case was adjourned for further proceedings to 26th October, 1967. Till 18th December, 1967, the management did not even consider it proper to make a request that evidence should first be recorded on issue No. 2 only. After the evidence of the Enquiry Officer was completed, the learned representative of the management made a statement that he closed his evidence on issue No. 2 only and prayed that this issue may be treated as a preliminary issue. In case the management wanted to make some such request it should have been done in the very beginning when the issues were framed on 4th September, 1967. The management did not bother to do so and after a number of adjournments had been taken this request was made for the first time on 18th December, 1967 and after this request was not accepted and an opportunity was given to the management to produce all the evidence which they considered proper for the purpose of providing that the termination of the services of the workman was justified, the management did not produce any evidence worth the name.

The manner in which a number of objections have been raised from time to time regarding the validity of the constitution of this Court and the appointment of the present Presiding Officer also gives little credit to the management. The State of Haryana was formed on 1st November, 1966. The order of reference in this case was

received on 31st July, 1967 and the management filed their first written statement on 1st September, 1967, i.e., almost after 10 months of the formation of the State but till 12th April, 1968, it did not dawn upon the management that the Court before which they had been appearing through out and producing their evidence was not properly constituted. When this objection was raised for the first time on 12th April, 1968, the management even did not consider it proper to make a formal prayer for permission to amend the written statement and take up this additional plea. Of course the right of the party to raise any objection at any time can not be taken away but the parties who appear before a Court constituted by law are expected to behave in a responsible manner and it is possible to appreciate the conduct of a party which raises objections in dribblets. It appears that the sole object of the management in this case has been to thwart the further progress of the case by all possible means. At first the management wanted that evidence in the case should not be recorded although the case had been fixed for evidence and requested that the preliminary objections be tried first separately. When this was done and the case was again fixed for evidence, the management wanted that issues on merits should also be tried piecemeal. When this request was not accepted and the evidence was completed the management took into their head to file one application after raising technical objections questioning the validity of the constitution of the Court and the appointment of the Presiding Officer each time the case was fixed for arguments. The management were represented through out by an able and experienced Labour Law Advisor and if a little thought had been bestowed to the case in the very beginning then most of the objections which have been raised from time to time later on could have been raised in the written statement in the very first instance but it was not done. It appears that the only object of the management was to harras the workman as much as they possibly could.

I would now take up the various technical objections which the management have taken from time to time. Of course a party has a right to object to the jurisdiction of the Court before which it has been called upon to appear if it feels that the Court has not been constituted in accordance with law or the appointment of the Presiding Officer is not valid but it is also essential that the party concerned must also take appropriate steps to seek redress from the Court which can grant him the relief. This Court is a Court of special jurisdiction constituted under the Industrial Disputes Act and is not competent to give any findings regarding the constitutional validity of section 2A of the Industrial Disputes Act. As regards the objection that this Court has not been properly constituted and the appointment of the Presiding Officer is not valid, it is doubtful if the Court concerned can give any findings on these points because if what the management says is correct then any finding given by such a Court or the Presiding Officer would have no legal value. In case therefore the management really felt that this Court is not properly constituted or the appointment of the present Presiding Officer is not valid then the only course open to them was to approach the High Court and not waste their time in producing their evidence or content themselves by simply raising these objections in dribblets in this Court. I, therefore, find the additional issue framed on 22nd April, 1968, in favour of the workman.

Although no separate issues were framed with regard to various technical objections raised from time to time but I have heard the learned representatives of the parties. After carefully considering the submissions of the learned representatives of the parties. I am of the opinion that there is also no substance in the merits of the objections raised on behalf of the management. This Court with headquarters at Rohtak was constituted for the first time, —*vide Punjab Government Gazette* notification No. 11495/12474-C-Lab-57/11245, dated 7th February, 1953 and since then it has continued to function up to the afternoon of 16th June, 1968. No objection was ever raised after the formation of the State of Haryana that the notification issued by the Punjab Government had ceased to be operative because a new State has come into existence. By virtue of section 88, read with section 2(g) of the Punjab Reorganisation Act no fresh notification was necessary. The Headquarters of this Court was shifted from Rohtak to Faridabad, —*vide Gazette* notification No. 5414-3 Lab-68/15254, dated 20th June, 1968. By this notification the word "Faridabad" had been substituted for the word "Rohtak". By no stretch of imagination it can be said that the Labour Court at Rohtak was abolished by reason of this notification and a new Labour Court with its Headquarters at Faridabad was constituted and for this reason a fresh notification as required by section 7 of the Industrial Disputes Act was necessary. The appointment of the present Presiding Officer of the Labour Court was also duly notified in the Official Gazette, —*vide* notification No. 7103-3-Lab-67/25650, dated 24th August, 1967. Rule 5 of the rules framed under the Industrial Disputes Punjab Rules, 1958, requires that "the appointment of the Labour Court.....together with the name of the person constituted it.....shall be notified in the official Gazette". This was done when the Court was first constituting in the year 1958 and the appointment of the present Presiding Officer was also notified after he assumed the charge. In my opinion therefore there is not the least substance in any of the technical objections which the management have taken up from time to time regarding the validity of the constitution of the Court or the appointment of the Presiding Officer.

As regards the merits of the case the management have produced Shri E.F. Danial who held the domestic enquiry against the workman in order to prove that a fair and proper enquiry was held into the charges framed against the workman and therefore his dismissal was fully justified. I have carefully considered the evidence produced by the parties and it appears that there was a prejudice against the workman from the very beginning even before the start of the enquiry. The very language of the letter dated 16th November, 1966, marked Ex. M.W. 1/5 by which the management informed the workmen that it has been decided to hold a regular enquiry against him shows that the management had already made up their mind that the workman was guilty. In accordance with the provisions of the Standing Orders the explanation of the workman was called on receipt of the complaint made against him by the Works Manager alleging rudeness on the part of the workman on 5th November, 1966. The workman had also made a report giving his version of what had happened on 5th November, 1966. The management in the letter dated 16th November, 1966, addressed to the workman conveying their decision that his explanation was not satisfactory referred to the report submitted by him as a "so called report" and without hearing the workman jumped to the conclusion that his report had a definite connection with his explanation. The management have clearly tried to imply that the workman had simply tried to forestall the complaint made against him and had prepared a defence version even before his explanation was called. This letter was sent to the workman under the signatures of the Partner of the respondent concern who is the ultimate authority, so far as the appointment and dismissals of the workmen are concerned and if the Partner had already made up his mind, it is not possible to imagine how an office Secretary whose job was simply to attend to the office correspondence and do the type work could possibly go against the wishes of his boss and submit a report favourable to the workman.

It also appears that a fair opportunity was not given to the workman to defend himself during the course of the domestic enquiry and in this manner the principles of natural justice have been violated. It is true that

under the provisions of the Standing Orders a workman is not entitled as of right to any outside help for the purpose of defending himself during the course of domestic enquiry held by the management but it can hardly be said to be fair if the management choose to appoint an able and experience Labour Law Advisor to represent them before their own Enquiry Officer and to deny the same facility to the workman. In this case admittedly Shri R.C. Sharma who is an able and experienced Labour Law Advisor and appears in a large number of cases on behalf of the managements in this Court was also appearing before the Enquiry Officer on behalf of the management and examined the witness but the workman had no assistance at all from any body. The Enquiry Officer says that the workman was given an opportunity to get the help of a co-worker if he so desired but under the circumstances of the case this was no help at all. The fact that there was no cross-examination worth the name on the witness appearing on behalf of the management is patent from the record of the enquiry proceedings itself. The Works Manager Shri Bawaja was the most important witness who appeared on behalf of the management because the workman is supposed to have behaved rudely with him and it was on the complaint of Shri Bhawaja that the workman was placed under suspension with immediate effect. The workman had denied the correctness of the complaint made against him by Shri Bhawaja and had given his own version as to what had exactly happened on the day in question but as the workman was denied assistance of an experienced person to represent him he could not cross-examine Shri Bhawaja at all. The ability of this workman to cross-examine this witness is apparant from the very first question which he put to him. The question put was as to where the enquiry was being held and the answer given was that the enquiry was being held in the permises of the Messrs Motoren Industries, Faridabad, and in the office of the Secretary who was the Enquiry Officer. The next question put was as to where the office of the Works Manager is situated. These type of questions show the ability of the workman to cross-examine the witness. The workman could hardly put a few more questions and then expressed his inability to cross examine further on the ground that his condition was such that he could not continue with the cross-examination and requested for an adjournment. The Enquiry Officer wanted to adjourn the enquiry for half an hour or one hour but on the repeated instance of the workman ultimately agreed to postpone the enquiry. Even on the adjourned date the workman could not do justice to his case and hardly put any sensible question to the witness. The provisions of the certified standing orders applicable to the respondent Company do not authorise the management to get the services of Professional Labour Law Advisor to help them during the enquiries against the workman and deny the same facility to the workman concerned. The fact that proper assistance was denied to the workman to defend himself under the circumstances of this case show want of good faith on the part of the management and it has resulted in the denial of justice to the workman. This fact is also apparant from the record. The workman in his defence submitted before the enquiry Officer that when he issued service, he was an ordinary fitter but by dint of hard and efficient work he had arisen to the position of a Supervisor and during the whole of his service he gave no chance of complaint to the management. The Enquiry Officer in his report has not disbelieved this version of the workman. It is, therefore, not clear why all of sudden on 25th October, 1966 the management should have discovered that the workman concerned was inefficient worker and was solely responsible for spoiling 21 Jeep Leaves because he did not use the small eye-rolling machine which has tapered rollers "Dab" plates and instead the worker had the jeep leaves, eye rolled on the big eye rolling machine having plain "Dab" plate as a result of which the eyes of these jeep leaves were opened from both sides. The learned representative of the workman has rightly pointed out that if the workman concerned had been inefficient and did not know the work which he was supposed to be supervising then such defects would have been coming to the notice of the management earlier as well but this is not the case of the management that the workman was an inefficient worker from the very beginning but was being tolerated. The learned representative of the workman has also rightly pointed out that the workman concerned was a supervisor but the actual work was being done by the other workers but the management have not called for the explanation or charge-sheeted any other worker and have held the supervisor solely responsible for causing the alleged loss to the management and although the management led no evidence before the Enquiry Officer about the extent of the loss yet the Enquiry Officer came to the conclusion that the workman was guilty of a major mis-conduct under section 30(10) of the certified standing orders. Thus there is no doubt that the findings of the Enquiry Officer are perverse in this respect.

It also appears that the management were so set against the workman that they even refused to oblige him with a copy of the certified standing orders on the plea that the copy of the standing orders in English as well as in Hindi were pasted on the notice Board, but it was forgotten that the workman had already been placed under supervision and he could not even enter the permises of the factory and even if he could do so with the permission of the management, he could not read certified standing orders which are in English because admittedly he does not know English. It is true that a workman is not entitled as of right to ask for a copy of the certified standing orders but in order to assist him in his defence, the management should have at least offered him a copy of the certified standing orders on payment of copy fees if necessary because it was put to the Enquiry Officer that the workman wanted a copy of the certified standing orders so as to have the benefit and advise of the union leaders who wanted to assist him. In my opinion the enquiry was only one sided affair and the workman had not even ghost of chance to prove his innocence although he genuinely felt that he was innocent and at the earliest possible opportunity had given out his defence version but it was disbelieved for no reason what so ever. Under these circumstances it cannot be held that a fair and proper enquiry has been held against the workman and in my opinion the management was not justified in terminating his services. He is therefore entitled to be reinstated with full back wages and continuity of service.

Dated 2nd October, 1968

P. N. THUKRAL,

Presiding Officer,
Labour Court, Faridabad.

No. 1819, dated, 11th October, 1968

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

Dated 2nd October, 1968

P. N. THUKRAL,

Presiding Officer,
Labour Court, Faridabad.